

COMMITTEE ON HUMAN RESOURCES/INSURANCE

November 3, 2004

5:30 PM

Chairman Shea called the meeting to order.

The Clerk called the roll.

Present: Aldermen Shea, DeVries, Garrity, Forest

Absent: Alderman Sysyn

Messrs.: V. Lamberton, C. Martinsen, T. Bowen, Atty. Muller

Chairman Shea addressed Item 3 of the agenda:

Communication from Virginia Lamberton, Director of Human Resources, requesting the reclassification of one Equipment Operator V position (Lawrence), salary grade 16 to a new classification of Reconstruction Coordinator, salary grade 17.

Alderman Forest asked Ginny this reclassification is it because of an error that was made or the person is doing more work.

Ms. Lamberton answered there are actually three Equipment Operation V positions in the Highway Department. This particular position has duties that exceed the other two positions. This position not only is required to operate all of the heavy equipment, but in addition to that the incumbent is required to supervise a work crew and so because he is required to supervise a work crew he would get more points under the supervision factor, which would bring him to a 17. However, we didn't want to make him a generic supervisor because those class specifications don't require incumbents to actually operate the heavy equipment and so we decided after many months of discussion that we would create a new job title and a new job spec that clearly stated the incumbent would be required to use the heavy equipment at the same time supervising a crew.

Alderman DeVries stated Ginny I have a follow up question on that if I might. So that does mean that henceforth any individual hired into this position will have the supervisory responsibility and also be required to have the CDL and be required to know how to use all of that heavy equipment.

Ms. Lamberton responded yes.

On motion of Alderman Forest, duly seconded by Alderman DeVries it was voted to recommend that the request be approved and that the ordinance be referred to the Committee on Bills on Second Reading for technical review.

Chairman Shea addressed Item 4 of the agenda:

Communication from Virginia Lamberton, Director of Human Resources, submitting a proposed tuition reimbursement policy for non-affiliated employees.

Alderman DeVries stated due to a request from Human Resources, I am moving that this item be tabled.

Alderman Garrity duly seconded the motion.

Chairman Shea called for a vote. There being none opposed, the motion carried.

Chairman Shea addressed Item 5 of the agenda:

Communication from Carol Johnson, Deputy City Clerk, requesting that the City Clerk position be properly classified at a salary grade 27 per recommendation of Ms. Christine Martinsen dated September 24, 2004.

Alderman Forest stated I will ask the same question I asked for Item 3. This reclassification is it due to an error or what is the reason for the reclassification?

Ms. Lamberton replied as you will note from the correspondence, I didn't personally participate in this particular review but in fact it is in error in the original assignments of points.

Alderman Forest asked does this error have to do with Yarger Decker.

Ms. Lamberton answered yes. The point factor system was developed by Yarger Decker.

Alderman Forest asked and this was what, overlooked.

Ms. Lamberton answered I can't say how it happened because I wasn't here but it very blatantly undervalued the supervision factor. It is equivalent to a department that might have five or six employees when in fact this department has four or five work units and 20 regular employees and then other part-time employees.

Alderman Forest asked has this occurred before and has this been remedied before this way.

Ms. Lamberton answered in fact you may recall that when we requested to...for example when the Youth Services Director was vacant we looked at that position and analyzed it and determined that that position was overgraded. That position had far too many points under supervision. The Assessors positions were also looked at and they were moved from labor grade 26's down to 24's and 25's. The Economic Development Director position was moved up because the points weren't proper there.

Alderman DeVries asked Ginny was the revaluation of the office was done prior to the recent discussion for moving the meter operations, parking meter technicians into that office.

Ms. Lamberton answered what happened was the City Clerk's Office asked my office to look at their positions to determine if there would be any impact on the salary grades or the cost specifications if the Board approved Ordinance Violations and the traffic responsibilities coming under the City Clerk's Office. The only way you can do that is by looking at the positions, analyzing what they are doing today compared to what they might do in the future and then give a recommendation at that point.

Alderman DeVries asked so are you stating that the request for the appropriate grade for this position is dependent upon the extra supervisory position or was it found to be, in fact, already not properly graded with or without the new positions coming underneath their supervision.

Ms. Lamberton answered Christine Martinsen who did the actual desk audit analysis is here and she can tell you...

Alderman DeVries interjected would you like us to bring her forward to avoid a conflict.

Ms. Lamberton stated yes I would prefer you do that.

Alderman DeVries stated that would be fine. I would ask the same question then of Christine. The specific question that I had is when you did the desk audit on this position did you find that even before the discussion of adding two additional employees from the Ordinance division under the level of supervision for this individual that even without adding those extra employees there already would have triggered the request for the upgrade of this position?

Ms. Martinsen answered yes.

Alderman DeVries asked would you like to elaborate on that.

Ms. Martinsen answered well it was kind of interesting because basically when he was graded he was only one point away from the higher grade. That is highly unusual. Then when I looked at the point system a lot of the points that he received were accurate. That is what he was supposed to receive. Then in the area of supervision I noticed a little bit of a discrepancy. He should have gotten a higher grade in that area.

Alderman Sysyn stated I was on the Human Resources Committee when Yarger Decker was doing this and the City Clerk's Office, I believe, had come back in protesting the grade level that they got and it was denied for them to get the higher position. Going back to the ordinance people coming into the City Clerk's Office, when I asked the question if anybody in that department would be upgraded Ms. Johnson told me no, nobody would be upgraded due to that. So it seems by the letter that it is being upgraded because people are coming into this department.

Ms. Martinsen responded no that is not the case. People would have been upgraded and not just this particular position. The individuals that would be coming over from Ordinance Violations would have been upgraded only for the fact that they would be doing similar work to the Customer Service Representatives already there. It would not be fair to pay them less when they would all be working on the same front counter. Again, I looked at all of the positions and I looked in terms of how they were rated with Yarger Decker and what this new proposition would have entailed and basically two of the positions...the Customer Service Reps and the City Clerk's position would have been raised higher. Again, as we said earlier with the same...just looking at the position itself it is one point away from a Grade 27 and looking at how Yarger Decker...just an analysis of the points that he gave it did deserve another look. He was one point away.

Chairman Shea asked when you look at different classifications are other departments heads one point away from a different grade.

Ms. Martinsen answered no I have not seen that.

Chairman Shea asked well how many points away are they.

Ms. Martinsen answered I would really have to take a look.

Chairman Shea asked how can you say they aren't if you haven't taken a look.

Ms. Martinsen answered only on the ones that I have actually done and worked on do I know that for a fact. I don't know what everybody's point total is.

Chairman Shea asked who asked you to do this.

Ms. Martinsen answered I believe it was the City Clerk. I believe it came through the City Clerk's Office. It was during the reorganization there was a...

Chairman Shea interjected I can't follow you. Could you speak up please?

Ms. Martinsen responded it was during the talk about reorganization that I received a letter. I believe it went through Ginny and she said it is not appropriate for me to do and asked if I would do it.

Chairman Shea replied so the Human Resources Director asked you to look into this is that correct.

Alderman Forest stated before you go too far with that, I know what you are asking and I know what Christine is saying. When I proposed the reorganization of a lot of the traffic and the tickets and all of this stuff, the Traffic Committee requested of the City Clerk's Office to look in and investigate all of this combined. In that report to the City Clerk it also went to HR because there was a recommendation that I had made possibly having a regular parking control manager. That part was sent to HR and in the process of investigating all of this, I believe this was discovered. It had nothing to do with the City Clerk asking or HR asking. It was the Traffic Committee who had asked the City Clerk to do a report and report back to the Committee, which they have done. In the process, I believe, as Christine explained that is how they found this. It wasn't initiated by the City Clerk.

Alderman DeVries stated I don't know who in the audience would be prepared to answer this that wouldn't put them into a conflict but I am wondering what the budget impact to the City Clerk's Department is going to be from the three upgrades that would be now involved when we do the reorganization as opposed to the current level of funding for that supervisory position that was being

eliminated. As I said, I don't see anybody from Finance and I am not sure...HR could you address that?

Ms. Lamberton stated the Board killed Ordinance Violations going to the City Clerk's Office.

Alderman DeVries responded it was tabled.

Ms. Lamberton replied I beg your pardon. It was my understanding from the proposal...there are three positions in Ordinance Violations okay. If they went to the City Clerk's Office, the City Clerk's Office doesn't need another supervisor so they would not fill that position so, therefore, there would actually be money left over. So it wouldn't have any financial impact. It would be a positive thing.

Deputy City Clerk Johnson stated I am the one who brought this to the Committee obviously and it was discovered in the process of looking at the reorganization. The Traffic Committee had asked us to look at various aspects of the parking activities, which I know you are all aware of. In that process it got assigned to my desk basically along with Mr. Normand. In that process we asked the Human Resources Department to review what we were proposing as an organizational structure if, in fact, portions of the parking and Ordinance Violations tasks were taken over by our department. The reason I did that was because if I am going to make a report to the Board I am certainly going to tell the Board these are the costs that are involved or these are the savings. It was not one particular request, it was coming from a few different directions. So in that process I had asked that...Ginny had recused herself from the process because obviously there is a relationship there. Leo also had stepped aside in that process. So, Christine had been given the authority, it was my understanding from the HR Director, to review the positions that I had set forth in an organizational chart. We sat down and discussed various things. One of the things that I felt was that if, in fact, we were going to take two Customer Service Representatives from that department and ask them to perform work side by side with the Clerk's Office and perform some of those tasks as well because the work would all be shared, that they should all be the same grade. Christine agreed with that. So those two positions if they came over was an impact of about \$2,000 to our budget. It was not a heavy impact. Ordinance Violations also had a supervisory position that we were not proposing we would fill. The savings in total was approximately \$36,000 for that. In reviewing Christine's review of all of the positions what she had stated in her letter and I attached that to her review was that the City Clerk's position when it was established and set forth by the Yarger Decker schedule was graded at a 26 and in her opinion it should have been a Grade 27. It had been undervalued and some of the point factor system had not been applied, particularly in the supervisory area and she can correct me if I am misunderstanding it. It is not

something that the City Clerk requested. It is not something that Ms. Lamberton has requested. It is something that I am bringing to you and saying in all fairness I felt it was my responsibility to bring it to the attention of the HR Committee and request them to review it and make a recommendation to the Board as to what should be done in this instance. It was blatant from my understanding that it should have been graded at a 27 and somehow it just was over the process. To the best of my recollection, the City Clerk's position was never brought back to the HR Committee in that Yarger Decker process for reconsideration. The position that had come back to the HR Committee and I can go back and check the record, I believe was at one point in time the position that Mr. Normand is in. Actually it was Mr. Bergeron's position at the time and that position has since been eliminated and replaced and we reorganized from there to try to save some money at one point when he had left. The positions within the office have changed somewhat since that time anyway. I will go back and check the records for you certainly but the City Clerk's position itself was never appealed before the Committee for reconsideration to my recollection and neither did mine for that matter.

Alderman DeVries stated thank you for that information. When you were saying the upgrade for the two Ordinance Violations employees as they take on the City Clerk responsibilities as well it was \$2,000. Was that each or was that cumulative?

Deputy City Clerk Johnson responded I want to say it was \$2,000 in total. It may have been as much as \$3,000 but it was a very small impact. It was going to a Grade 13. It is not a huge difference. I talked to the Police Department and found out what they were graded as, where they were on the schedule and where they would come out.

Alderman DeVries stated I have one final question if I might to close this line of questions that I have. The financial impact of the upgrade from 26 to 27. Are you prepared, Christine, with that information?

Ms. Martinsen responded no I am not.

Alderman DeVries asked is it possible to find out.

Ms. Martinsen answered I can find out.

Alderman DeVries stated I understand that it is not entirely pertinent to this discussion. I am just gathering information as I can.

Deputy City Clerk Johnson stated I want to point out that we are not advocating taking over anything with Ordinance Violations as part of this process. It was just a separate issue that I brought to the Committee.

Alderman Forest moved to approve the request. Alderman DeVries duly seconded the motion. Chairman Shea called for a vote. The motion failed.

Alderman Forest stated I would like to file a minority report to the full Board.

Chairman Shea addressed Item 6 of the agenda:

Communication from Attorney Vincent Wenners, Jr. advising that Mr. Russell Bond, a retired Manchester Water Works employee should be receiving a pension at "half pay" rather than the lesser amount which disregards his standby pay.

Alderman DeVries stated I am wondering who we have here wishing to address this today. Maybe the HR Director first or the Water Works Director.

Alderman Forest stated from what I understand Mr. Bond received some standby pay and apparently that was not added to his retirement when he retired from Water Works. Again from what I understand and maybe Tom Bowen can come up and correct me if I am wrong but the way the City ordinance reads or read, I am not sure it has been changed, that it wouldn't allow that salary to be put into this retirement and that is why I believe Mr. Bond appealed this to us. I think it would be either up to us to inform Mr. Bowen to include it and maybe the City Solicitor...I really wanted to discuss the personnel matters in executive session but I understand that we cannot. There are some questions that we may want to ask Mr. Bowen that are personal in nature and I talked to the City Solicitor and he said we cannot go into executive session on this.

Chairman Shea asked the City Solicitor...

Alderman DeVries interjected I think we are allowed to ask the advice of our attorney as to how our ordinance pertains to this.

Atty. Muller asked what is the question. Are you looking for our view of the ordinance?

Chairman Shea answered yes first of all and then later on maybe...

Atty. Muller interjected my office's view of the ordinance is as follows. Yes it is in effect. It has been in effect since 1951, which was the so-called old system, non-contributory retirement system. Based on our conversations with Water Works, the term at half pay has been interpreted or has been as a matter of practice limited to salary. Therefore, under the rules of the statutory construction where you have a longstanding administrative practice that has interpreted a term in a certain manner that will continue to be applicable, therefore, the half pay would not include the standby pay but would simply include the salary because that is what has been done over time in terms of the administration of this ordinance.

Chairman Shea stated maybe Mr. Bowen can come up for a minute and explain what the precedence has been.

Mr. Thomas Bowen stated basically what Water Works has done is calculated the pension for Mr. Bond consistent with how we have done it over the past three or four decades. It is consistent with 11 other retired Water Works employees who are under the old pension plan that date back as early as 1980. It is also consistent with recommendations from the Finance Department as well as the City Solicitor's Office. We were aware prior to Mr. Bond retiring that there was going to be a question raised on this so we specifically asked the Solicitor's Office not for a written opinion but for their advice in proceeding. Basically the advice was to be consistent with past practice in this calculation. We are, as far as we know, also consistent with other City departments that have standby pay as part of their supplement – Parks & Recreation, Highway Department, and Public Building Services so this may have impact not only at the Water Works but in other City departments.

Alderman DeVries stated I do have a question for the City Solicitor. We do have other departments that are part of the state pension system and I am typically referring to the Fire Department. I know that some of the employees there also receive standby pay. Can you tell me if you are aware how that is categorized and interpreted by that pension system? Their standby pay? Is that considered salary?

Atty. Muller responded I don't know, however, in my view that is essentially irrelevant. The pension is actually awarded by the Water Commission and not by the Board of Aldermen. It is controlled by this particular ordinance and, therefore, this ordinance and the manner in which it has been administered is controlled by the Commission. What other retirement systems do I don't know but I don't think it is relevant in interpreting this particular statute.

Alderman DeVries replied so what you are telling me is that there is not a definition by law for standby pay that drives this decision but rather the ordinance

or the rules of the pension system that is defining how you look at standby pay to tie it to salary or other benefits.

Atty. Muller responded correct. The ordinance controls the fee. It sets up the...it authorizes the Board of Water Commissioners to set the pension. It sets the standard. The term half pay is not defined but as indicated it has been interpreted in a certain manner and a consistent manner and, therefore, as I stated earlier under the rules of statutory construction, that so-called administrative law has full control and that is how this is set.

Alderman DeVries stated I have one final question of the City Solicitor. So you are also saying that it is the opinion of your office that obviously your opinion will withhold legal challenge because it appears we have other attorneys weighing in differently. It looks like this will likely be challenged.

Atty. Muller responded I can't say whether it will be challenged or not but it is the opinion of my office that again under an option called administrative law, which is where you have a term that can be read one way or the other that has been subject to consistent interpretation by the official or body responsible for its administration, such as the Board of Water Commissioners, the indication here is that it has been applied in that manner in every other case and the adoption of the administrative law says that is the interpretation that controls, therefore, it would be the opinion of my office that that would govern the case.

Alderman Forest stated I have a two-part question. Can we on this Committee waive that ordinance and the second part of the question is would we be setting up a precedent for all 11 or however many came before us? Would we be setting a precedent to have the other 11 challenge?

Atty. Muller responded the precedent question I will deal with first. If you somehow change it so that standby pay would be included you might establish a precedent even if you tried to make it applicable to the other individual. You might get challenges from the others saying under some sort of disparate treatment attack. With regard to waiving it, you can amend the ordinance but that is all you can do. Again, the ordinance as it is currently set up, the actual authority to grant the pension resides with the Board of Water Commissioners, not the Board of Aldermen. The Board has powers to adopt or amend the ordinance but outside of that the only other authority lended to the Board is to make appropriations for the pensions.

On motion of Alderman Forest, duly seconded by Alderman Garrity, it was voted to receive and file this item.

TABLED ITEM

7. Report from the Human Resources Director relative to a bonus system, if available.

This item remained on the table.

There being no further business, on motion of Alderman Garrity, duly seconded by Alderman DeVries it was voted to adjourn.

A True Record. Attest.

Clerk of Committee